

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

United States Courts  
Southern District of Texas  
FILED

JUL 30 2007

Michael N. Milby, Clerk of Court

NAOMI JOHNSON, Individually and  
As Next Friend of NATHAN DAVID  
EHIWEVMA UDUOJIE, a Minor

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CIVIL ACTION NO.

VS.

“JURY”

WAL-MART STORES, INC. and  
KAZ, INC.

**PLAINTIFFS' ORIGINAL COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW Naomi Johnson, Individually and As Next Friend of Nathan David Ehiwevma Uduojie, a Minor, Plaintiffs herein, complaining of Wal-Mart Stores, Inc. and Kaz, Inc., hereinafter referred to as Defendants, and file this Plaintiffs' Original Complaint and Demand for Jury Trial and for causes of action would respectfully show unto the Court as follows:

I.

**PARTIES**

1. Plaintiffs are citizens of the State of Texas and domiciled in Houston, Harris County, Texas. Plaintiff Naomi Johnson is the natural mother of Nathan David Ehiwevma Uduojie, a Minor.

2. Defendant Wal-Mart Stores, Inc. (“Wal-Mart”) is a Delaware corporation with its principal office in Bentonville, Arkansas. Wal-Mart does business in Texas and may be served with process by mailing by registered or certified mail, return receipt requested, the citation and a copy of this Petition to its registered agent in Texas: CT Corporation System, 350 North St. Paul St., Dallas, Texas, 75201, in accordance with Tex. R. Civ. P. 106(a)(2).

3. Defendant Kaz, Inc. is a foreign corporation having sufficient business contacts with the State of Texas to make it amenable to service of process, but does not maintain a regular place of business or a designated agent upon whom service of process may be had for

causes of action arising out of business done in the State of Texas. For these reasons, service of process is to be made pursuant to Tex. Civ. Prac. & Rem. Code, § 17.044 by serving the Secretary of State of Texas as agent for Kaz, Inc. This matter arose out of business contacts in this state, and under the circumstances, Kaz, Inc., has appointed the Secretary of State of Texas as its agent upon whom service of process may be had in this action. The Secretary of State is requested to forward a copy of the process with this Petition to Patterson, Belknap, Webb & Tyler, LLP, by serving John P. Schmitt, Esq., an agent, servant, and/or employee at 1133 Avenue of Americas, New York, New York 10036.

II.

**JURISDICTION**

4. This Honorable Court has jurisdiction over this controversy pursuant to 28 U.S.C., §1332, for the reason there is diversity of citizenship between Plaintiffs and Defendants and the matter in controversy exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs.

III.

**VENUE**

5. The incident complained of herein occurred in the Southern District of Texas. Accordingly, venue is proper in the United States District Court for the Southern District of Texas, Galveston Division, pursuant to 28 U.S.C., §1391(a).

IV.

**GENERAL FACTUAL ALLEGATIONS**

6. On or about May 21, 2007, Plaintiff Nathan David Ehiwvma Uduojie, a Minor, a Minor, suffered burn injuries to his face and left arm as a result of a defective ReliOn humidifier manufactured by Kaz, Inc, Model RWM975, which was marketed and sold exclusively by Defendant Wal-Mart Stores, Inc.

7. Plaintiff Naomi Johnson regularly used the humidifier.

8. On May 21, 2007, Plaintiff Naomi Johnson was using the humidifier when it fell on the minor Plaintiff spilling scalding hot water on his face and left arm (the "Occurrence in Question"), causing extensive burns to Uduojie

9. As a proximate result of the occurrence in question, Plaintiff Nathan David Ehiwevma Uduojie, a Minor, suffered severe, disabling and disfiguring bodily injuries to his face, left arm, and body generally.

V.

### **CAUSES OF ACTION**

10. **Design Defect.** The humidifier was defectively designed by Defendant Kaz at the time it left the possession of Defendant Wal-Mart in that it was unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use, and such design defect was a producing cause of the occurrence in question.

11. **Manufacturing Defect.** The humidifier was defectively manufactured by Defendant Kaz at the time it was sold/left the possession of Defendant Wal-Mart in that it was dangerous to an extent beyond that which would be contemplated by the ordinary user of the product, with ordinary knowledge to the community as to the product's characteristics, and such manufacturing defects were a producing cause of the occurrence in question.

12. **Marketing Defect.** The humidifier was defectively marketed by Defendant Kaz at the time it was sold/left the possession of Defendant Wal-Mart Defendants Kaz and Wal-Mart failed to give adequate warnings of the dangers of the humidifier and/or failed to give adequate instructions to avoid such dangers, and such marketing defects rendered the humidifier unreasonably dangerous and was a producing cause of the occurrence in question.

13. **Breach of Implied Warranty.** The humidifier manufactured by Defendant Kaz and supplied by Defendant Wal-Mart was unfit for ordinary purposes for which such humidifiers are used because of its design/manufacturing and marketing defects and such condition was a proximate cause of the occurrence in question.

14. **Negligence.** Defendants Kaz, Inc. and Wal-Mart Stores, Inc. were negligent in connection with the design/manufacture, sale and marketing of the humidifier and such negligence was a proximate cause of the occurrence in question.

15. **Gross Negligence.** Defendants Kaz, Inc. and Wal-Mart-Stores, Inc. acted with gross negligence/malice and such gross negligence/malice was a proximate cause of the occurrence in question.

VI.

**DAMAGES**

16. Plaintiff Naomi Johnson has incurred reasonable and necessary medical expenses in the past and, in all probability, will incur reasonable and necessary medical expenses in the future.

17. Plaintiff Naomi Johnson has suffered mental anguish and loss of companionship and society of her son, Nathan David Ehiwevma Uduojie, a Minor, in the past and, in all probability, will suffer this element of damage in the future.

18. Plaintiff Nathan David Ehiwevma Uduojie, a Minor, has suffered physical pain, physical impairment, physical disfigurement and mental anguish in the past and, in all probability, will suffer these elements of damage in the future.

19. Plaintiff Nathan David Ehiwevma Uduojie, a Minor, has sustained a loss of wage earning capacity.

20. Plaintiffs should recover an additional amount from Defendants Kaz, Inc. and Wal-Mart Stores, Inc. as exemplary damages to punish and deter Defendants Kaz, Inc. and Wal-Mart Stores, Inc.

VII.

**DEMAND FOR PRE-JUDGMENT INTEREST**

21. Plaintiffs submit that many of the damages that they have sustained may be determined by known standards of value and accepted rules of evidence. Accordingly, Plaintiffs

claim that they are entitled to pre-judgment interest in accordance with §304.14, et seq., Texas Finance Code, or as the Court otherwise directs, calculated at the legal rate or as otherwise set by law of the Court.

VIII.

**DEMAND FOR JURY**

22. Plaintiffs hereby demand a trial by jury of all issues in this action.

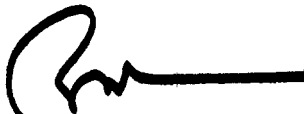
IX.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendants be cited and required to appear and answer herein according to the law, and that upon final hearing, Plaintiffs receive judgment from Defendants for the damages hereinabove set out, for costs of suit from date of filing, for pre-judgment interest, for interest from the date of judgment, and for such other and further relief to which Plaintiffs may show themselves justly entitled and will forever pray.

Respectfully submitted,

**VUJASINOVIC & BECKCOM, L.L.P.**



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**BRIAN BECKCOM**  
Federal Bar No. 24318  
1001 Texas Avenue, Suite 1020  
Houston, Texas 77002  
713.224.7800  
713.224.7801 Fax

**ATTORNEYS FOR PLAINTIFFS**

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> Naomi Johnson, et al.	<b>DEFENDANTS</b> Wal-Mart Stores, Inc. and Kaz, Inc.
<b>(b) County of Residence of First Listed Plaintiff</b> <u>Harris</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>County of Residence of First Listed Defendant</b> <u>unknown</u> (IN U.S. PLAINTIFF CASES ONLY)
<b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b> Vujasinovic & Beckcom, PLLC, 1001 Texas Avenue, Suite 1020 Houston, Texas 77002; 713.224.7800; 713.224.7801 fax	NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known) <div style="text-align: right; font-weight: bold; font-size: 1.2em;">JUL 30 2007</div>

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)																		
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Citizen of This State</th> <th style="text-align: center; border-bottom: 1px solid black;">PTF 1</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF 1</th> <th style="text-align: left; border-bottom: 1px solid black;">Incorporated or Principal Place of Business In This State</th> <th style="text-align: center; border-bottom: 1px solid black;">PTF 4</th> <th style="text-align: center; border-bottom: 1px solid black;">DEF 4</th> </tr> <tr> <td style="border-bottom: 1px solid black;">Citizen of Another State</td> <td style="text-align: center; border-bottom: 1px solid black;">2</td> <td style="text-align: center; border-bottom: 1px solid black;">2</td> <td style="border-bottom: 1px solid black;">Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center; border-bottom: 1px solid black;">5</td> <td style="text-align: center; border-bottom: 1px solid black;">5</td> </tr> <tr> <td style="border-bottom: 1px solid black;">Citizen or Subject of a Foreign Country</td> <td style="text-align: center; border-bottom: 1px solid black;">3</td> <td style="text-align: center; border-bottom: 1px solid black;">3</td> <td style="border-bottom: 1px solid black;">Foreign Nation</td> <td style="text-align: center; border-bottom: 1px solid black;">6</td> <td style="text-align: center; border-bottom: 1px solid black;">6</td> </tr> </table>	Citizen of This State	PTF 1	DEF 1	Incorporated or Principal Place of Business In This State	PTF 4	DEF 4	Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
Citizen of This State	PTF 1	DEF 1	Incorporated or Principal Place of Business In This State	PTF 4	DEF 4														
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5														
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6														

<b>IV. NATURE OF SUIT</b> (Place an "X" in One Box Only)					
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act (Excl. Veterans) <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

<b>V. ORIGIN</b> (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

<b>VI. CAUSE OF ACTION</b>	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. 1332</u>
Brief description of cause: <u>vaporizer manufactured by Defendant Kaz and sold by Defendant Wal-Mart</u>	

<b>VII. REQUESTED IN COMPLAINT:</b>	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	<b>DEMAND \$</b>	CHECK YES only if demanded in complaint: <b>JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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<b>VIII. RELATED CASE(S) IF ANY</b>	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY	RECEIPT #	AMOUNT	APPLYING IFF	JUDGE	MAG. JUDGE
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